

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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ANTHONY O. LONGSTREET, SR.,  
Plaintiff,  
v.  
DAVID P. WELLS, *et al.*,  
Defendants.

Case No. 3:22-cv-00065-MMD-CLB  
ORDER

**I. SUMMARY**

*Pro se* Plaintiff Anthony O. Longstreet, Sr., who was incarcerated in the custody of the Nevada Department of Corrections (“NDOC”), brings this action against Defendants David P. Wells, Hayden Solis, P. Salinas, P. Aguilar, and Detective Knickerbocker under 42 U.S.C. § 1983. Before the Court is United States Magistrate Judge Carla L. Baldwin’s Report and Recommendation (ECF No. 2 (“R&R”)), recommending that the Court grant Longstreet’s application to proceed *in forma pauperis* (ECF No. 1 (“IFP Application”)), and dismiss the case without prejudice and without leave to amend. Longstreet timely filed an objection (ECF No. 3 (“Objection”)) and a motion for leave to amend (ECF No. 4 (“Motion”)) with an attached first amended complaint (ECF No. 4-1 (“Proposed FAC”)). As further explained below, the Court overrules Longstreet’s Objection, adopts the R&R except for the recommendation to not permit amendment, and denies the Motion, but will grant Longstreet leave to cure the deficiencies in the Proposed FAC.

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## II. BACKGROUND<sup>1</sup>

On August 7, 2019, Longstreet pled no contest to a domestic violence charge and was ordered to pay over \$1000 in fines and fees as part of his sentencing. (ECF No. 3 at 1.) Longstreet allegedly failed to pay the fines and was arrested on March 1, 2020. (ECF Nos. 1-1 at 2, 3 at 2-3, 4-1 at 3.) At the time of the arrest, Longstreet was also being investigated by Wells for a different, unrelated battery that he committed at a Dotty's restaurant on December 6, 2019 ("Dotty's Incident"). (ECF No. 3 at 2.) Longstreet alleges that officers Aguilar, Salinas, and Solis, used the arrest to confiscate Longstreet's cellphone, with the purpose of collecting evidence against him for the Dotty's Incident. (ECF Nos. 1-1 at 2-3, 3 at 2-3, 7-8.) Wells then allegedly performed an unlawful, warrantless search of Longstreet's cellphone, in violation of the Fourth Amendment. (ECF Nos. 1-1 at 2, 3 at 3.)

After he was arrested and in city jail for the unpaid fines, Longstreet claims that Wells and Knickerbocker visited his cell. (ECF Nos. 1-1 at 4, 3 at 3.) As part of their ongoing investigation for the Dotty's Incident, they allegedly made an unauthorized recording of their conversation, in violation of Longstreet's constitutional rights. (*Id.*) Wells intended to use the recorded interview to "support probable cause to charge [Longstreet] for the battery" at Dotty's. (ECF No. 3 at 6.) Longstreet eventually pled guilty to the Dotty's Incident, was sentenced, and has recently been released.<sup>2</sup> (*Id.* at 3.)

Longstreet filed this 42 U.S.C. § 1983 suit against Defendants for the illegal search and seizure of his cellphone and the unauthorized jail cell recording. (ECF No. 1-1.) In his Complaint, he asserts a Fourth Amendment claim for the illegal search and seizure of his cellphone, a Fourth Amendment claim for invasion of privacy, and a Sixth Amendment

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<sup>1</sup>The facts in this section are adapted from Longstreet's Complaint and Objection. (ECF Nos. 1-1, 3.) Longstreet's Objection offers several clarifying details that were missing from the Complaint. For the purposes of screening, the Court only takes the facts in the Complaint as true, but also considers Longstreet's arguments in the Objection when deciding whether leave to amend should be granted.

<sup>2</sup>It appears from Longstreet's allegations that when the Complaint was filed and the R&R was issued, Longstreet was still serving his sentence for the Dotty's Incident. (ECF No. 3 at 3.) However, Longstreet has since finished his sentence and was released in May 2022. (ECF Nos. 5, 6.)

claim for denial of fair judicial process. (*Id.* at 3-5.) Following the issuance of Judge Baldwin's R&R, Longstreet filed a motion for leave to amend with an attached Proposed FAC, wherein he asserts additional claims, including Fourteenth Amendment Due Process, Fourteenth Amendment Equal Protection, and 42 U.S.C. § 1985 conspiracy claims. (ECF Nos. 4, 4-1.)

### III. LEGAL STANDARD

This Court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). Where a party timely objects to a magistrate judge's report and recommendation, the Court is required to "make a de novo determination of those portions of the [report and recommendation] to which objection is made." *Id.* The Court's review is thus de novo because Longstreet filed his Objection. (ECF No. 3.)

### IV. DISCUSSION

The Court first addresses the Fourth Amendment claim for illegal search and seizure and the Sixth Amendment claim in Longstreet's Complaint, which it finds are barred by *Heck v. Humphrey*, 512 U.S. 477 (1994). The Court next considers Longstreet's Fourth Amendment claim for invasion of privacy, which must be dismissed because he does not have a reasonable expectation of privacy in his jail cell. Finally, the Court examines Longstreet's new claims in the Proposed FAC, which include his conspiracy to interfere with civil rights and Fourteenth Amendment claims. Because Longstreet failed to state colorable Fourteenth Amendment and conspiracy claims, the Court dismisses the claims without prejudice but will grant Longstreet leave to cure the deficiencies.

#### A. Heck-Barred Claims

To start, Longstreet specifically objects<sup>3</sup> to Judge Baldwin's recommendation that his case should be dismissed because he is challenging his state court criminal conviction. (ECF No. 3 at 3-5.) Longstreet contends that he is not using § 1983 to challenge his conviction because he has already pled guilty and served his sentence. (*Id.*)

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<sup>3</sup>As to the remaining portions of the R&R that Longstreet did not object to, the Court finds that Judge Baldwin did not clearly err. (ECF Nos. 2, 3.)

1 Instead, he is separately suing Defendants for monetary damages for the unreasonable  
 2 search and seizure of his cellphone under the Fourth and Sixth Amendments. (*Id.* at 3,  
 3 6.) The Court agrees with Judge Baldwin that these constitutional claims are *Heck*-barred.

4 The U.S. Supreme Court held that in a § 1983 lawsuit for damages,<sup>4</sup> “the district  
 5 court must consider whether a judgment in favor of the plaintiff would necessarily imply  
 6 the invalidity of his conviction or sentence; if it would, the complaint must be dismissed  
 7 unless the plaintiff can demonstrate that the conviction or sentence has already been  
 8 invalidated.” *Heck*, 512 U.S. at 487. If the court finds that “the plaintiff’s action, even if  
 9 successful, will *not* demonstrate the invalidity of any outstanding criminal judgment  
 10 against the plaintiff, the action should be allowed to proceed, in the absence of some  
 11 other bar to the suit.” *Id.* However, the Supreme Court in *Heck* left open whether this rule  
 12 applied to a Fourth Amendment unreasonable search claim. See *Whitaker v. Garcetti*,  
 13 486 F.3d 572, 583 (9th Cir. 2007) (citing *Heck*, 512 U.S. at 487 n.7).

14 Longstreet maintains that his Fourth Amendment claim is not barred because he  
 15 already pled guilty to the Dotty’s Incident and his sentence expired in May 2022.<sup>5</sup> (ECF  
 16 No. 3 at 3.) In *Byrd v. Phx. Police Dep’t*, where Byrd pled guilty to conspiracy to commit  
 17 possession, the Ninth Circuit held that Byrd’s illegal search claim was not *Heck*-barred  
 18 because the claim “ha[d] nothing to do with the evidentiary basis for his conspiracy  
 19 conviction.” 885 F.3d 639, 641, 645 (9th Cir. 2018) (citations omitted). The police illegally  
 20 searched Byrd *after* they found the drugs upon which his conspiracy charge was based.  
 21 See *id.* at 645. Therefore, the illegal search was distinct temporally or spatially from the  
 22 factual basis for Byrd’s conspiracy conviction. See *id.* (citations omitted). Hence, success

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24 <sup>4</sup>The Supreme Court has since specified that *Heck* applies “regardless of the form  
 25 of remedy sought,” including to claims for monetary damages and declaratory judgment,  
 26 which Longstreet seeks in his Complaint. (ECF No. 1-1 at 6.) See *Whitaker v. Garcetti*,  
 486 F.3d 572, 583 (9th Cir. 2007) (citing *Edwards v. Balisok*, 520 U.S. 641, 648 (1997)).

27 <sup>5</sup>Because Longstreet has been released and is not in custody, he may no longer  
 28 file a habeas corpus petition and his only remedy is under § 1983. (ECF Nos. 5, 6.) See  
 28 U.S.C.A. § 2254 (stating that “[t]he Supreme Court, a Justice thereof, a circuit judge,  
 or a district court shall entertain an application for a writ of habeas corpus in behalf of a  
 person *in custody* pursuant to the judgment of a State court only on the ground that he is  
*in custody* in violation of the Constitution or laws or treaties of the United States.”).

1 of Byrd's "§ 1983 action would not necessarily demonstrate the invalidity of his  
2 conviction." *Id.* at 644.

3 Longstreet's case is different from *Byrd* in several important ways. Although  
4 Longstreet briefly mentions that the evidence from his cellphone was not used in criminal  
5 proceedings, he repeatedly emphasized that Defendants seized and searched his phone  
6 to gather evidence and build probable cause to charge him for the Dotty's Incident. (ECF  
7 Nos. 1-1 at 2-3, 3 at 2-3, 6.) In fact, Longstreet specifically accuses Wells of using his  
8 cellphone to access his social media account to look for a photo of a Mayweather t-shirt  
9 that Longstreet wore during the Dotty's Incident. (ECF No. 3 at 3.) Wells allegedly  
10 admitted to accessing Longstreet's Facebook page to look for this evidence in the police  
11 report. (*Id.*) Longstreet also alleges that his cellphone had "material witness names" for  
12 the Dotty's Incident. (ECF No. 1-1 at 2.)

13 Unlike in *Byrd*, where the evidentiary basis for the plaintiff's conspiracy conviction  
14 was not derived from the illegal search of his person, it appears that police here were  
15 using evidence from Longstreet's cellphone to identify and charge him for the Dotty's  
16 Incident. (ECF Nos. 1-1 at 2-3, 3 at 2-7.) See 885 F.3d at 645. In other words, the validity  
17 of Longstreet's battery conviction appears to depend, in part, on the legality of the search  
18 of his cellphone, used by detectives to connect Longstreet to the crime. (*Id.*) See *id.* at  
19 644 (citing *Lockett v. Ericson*, 656 F.3d 892, 896-97 (9th Cir. 2011)). The present case is  
20 more analogous to *Whitaker* and *Szajer v. City of Los Angeles*, prior Ninth Circuit cases  
21 where the plaintiffs also pled guilty or nolo contendere to their charges. See *Whitaker*,  
22 486 F.3d at 584; *Szajer v. City of L.A.*, 632 F.3d 607, 612 (9th Cir. 2011). In those cases,  
23 the Ninth Circuit held that the plaintiffs' Fourth Amendment claims were *Heck*-barred  
24 because they "challenge[d] the search and seizure of the evidence upon which their  
25 criminal charges and convictions were based." See *Byrd*, 885 F.3d at 645 (citing  
26 *Whitaker*, 486 F.3d at 584; *Szajer*, 632 F.3d at 612).

27 Because it appears that evidence from the illegal search and seizure was used by  
28 detectives to support Longstreet's battery charge, success on the claim "would

necessarily imply the invalidity” of his state-court conviction, and Longstreet has not demonstrated that his conviction or sentence has already been invalidated.<sup>6</sup> (ECF Nos. 1-1 at 14-15, 3 at 2-3, 6.) See *Heck*, 512 U.S. at 487. Longstreet’s Fourth Amendment claim is therefore *Heck*-barred and may not proceed. Longstreet’s Sixth Amendment claim is similarly *Heck*-barred because it is premised on the same illegal search and seizure of his cellphone.<sup>7</sup> (ECF No. 1-1 at 3, 5.) See *id.*

#### **B. Fourth Amendment Invasion of Privacy Claim**

Longstreet also alleges that after his arrest for the unpaid fines, Wells and Knickerbocker visited his jail cell and violated his Fourth Amendment rights by recording him without authorization to gather evidence for the Dotty’s Incident. (ECF Nos. 1-1 at 4, 3 at 3, 6.) However, the Court finds that Longstreet fails to state a claim because “[t]he touchstone of [the] Fourth Amendment analysis is whether a person has a constitutionally protected reasonable expectation of privacy,” and the Supreme Court has held that prisoners and detainees generally do not have a reasonable expectation of privacy in their jail cells. See *California v. Ciraolo*, 476 U.S. 207, 211 (1986) (internal quotations marks omitted); *Hudson v. Palmer*, 468 U.S. 517, 525-26 (1984); *Bell v. Wolfish*, 441 U.S. 520, 557 (1979); see also *Mitchell v. Dupnik*, 75 F.3d 517, 522 (9th Cir. 1996). The Court

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<sup>6</sup>To the extent Longstreet is also attempting to assert state law claims for the search and seizure of his cellphone and the unauthorized recording, the Court declines to exercise supplemental jurisdiction over these claims since Longstreet’s constitutional claims are dismissed. (ECF No. 1-1 at 3-4.) See 28 U.S. Code § 1367(c) (providing that “[t]he district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if . . . (3) the district court has dismissed all claims over which it has original jurisdiction”).

<sup>7</sup>The Ninth Circuit has held that district courts may relax *Heck* requirements and allow former prisoners to bring § 1983 claims “despite the *Heck* bar because habeas relief was unavailable.” *Guerrero v. Gates*, 442 F.3d 697, 705 (9th Cir. 2006) (citing *Nonnette v. Small*, 316 F.3d 872, 877 n.6 (9th Cir. 2002)). However, *Nonnette* relief “affects only former prisoners challenging loss of good-time credits, revocation of parole or similar matters,” and Longstreet’s claims do not fall under these categories. *Guerrero*, 442 F.3d at 705 (citation omitted). Moreover, this exception only extends to former prisoners who *timely* pursued habeas corpus relief during their incarceration but were subsequently released from custody. See *id.* (holding that “a § 1983 plaintiff’s timely pursuit of available habeas relief is important”). Here, Longstreet failed to timely seek habeas corpus relief while he was incarcerated. The Court therefore declines to relax *Heck* requirements and grant Longstreet *Nonnette*-type relief.

1 therefore dismisses Longstreet's Fourth Amendment invasion of privacy claim with  
2 prejudice and without leave to amend.<sup>8</sup>

3 Notably, Longstreet does not allege that his statements during the jail cell  
4 conversation were involuntary or coerced—he only alleges that the *recording* by  
5 Defendants was made without his consent. (ECF Nos. 1-1 at 4, 3 at 3.) However, to the  
6 extent that Longstreet is actually trying to allege a *Miranda* violation for the jail cell  
7 conversation, this claim is dismissed with prejudice as the Supreme Court recently held  
8 that a plaintiff may not sue for damages under § 1983 for *Miranda* violations. *See Vega*  
9 *v. Tekoh*, Case No. 21-499, 2022 WL 2251304, at \*10 (June 23, 2022).

### 10 **C. Motion to Amend and Proposed FAC**

11 Longstreet filed a motion for leave to amend with an attached Proposed FAC,  
12 where he reasserts his Fourth Amendment invasion of privacy and search and seizure  
13 claims. (ECF Nos. 4, 4-1.) Longstreet also includes new claims for conspiracy to interfere  
14 with civil rights, violation of the Fourteenth Amendment Due Process Clause, and violation  
15 of the Fourteenth Amendment Equal Protection Clause. (ECF No. 4-1.) Because the  
16 Court found that Longstreet's Fourth Amendment claims are barred, it will only review his  
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20 <sup>8</sup>To the extent Longstreet is trying to assert an invasion of privacy claim under  
21 Nevada common law, the Court declines to exercise supplemental jurisdiction and  
22 dismisses the claim without prejudice. *See* 28 U.S.C. § 1367(c)(3). However, should  
23 Longstreet decide to reassert this claim in his second amended complaint, he likely does  
24 not have a cognizable cause of action. The purpose of Nevada's invasion of privacy tort  
25 "is to provide redress for intrusion into a person's reasonable expectation of privacy."  
26 *Clark Cnty. Office of Coroner/Med. Exam'r v. Las Vegas Review-Journal*, 458 P.3d 1048,  
27 1061 (Nev. 2020) (citations omitted). The Nevada Court of Appeals previously affirmed a  
28 lower court's finding that a prisoner did not have a reasonable expectation of privacy in  
his jail cell. *See Cassady v. Morano*, Case No. 71066, 2017 WL 519557, at \*1-\*2 (Nev.  
Ct. App. Jan. 30, 2017). The Nevada Supreme Court has also acknowledged that "a  
convicted person has a diminished expectation of privacy in the penal context." *Gaines v.*  
*State*, 998 P.2d 166, 172 (Nev. 2000). Thus, the Court predicts that the Nevada Supreme  
Court would follow the appellate court and Longstreet likely does not have a cognizable  
state tort claim because he did not have a reasonable expectation of privacy in his jail  
cell. *See Mason & Dixon Intermodal, Inc. v. Lapmaster Intern. LLC*, 632 F.3d 1056, 1060  
(9th Cir. 2011) (citations omitted); *Judd v. Weinstein*, 967 F.3d 952, 955-56 (9th Cir. 2020)  
(citations omitted).

1 new claims.<sup>9</sup>

2 First, Longstreet broadly alleges that Wells, Solis, and Aguilar, while acting under  
3 the color of state law, conspired to deprive him of his Fourth and Fourteenth Amendment  
4 rights by illegally confiscating his cellphone because he was African American. (*Id.* at 5.)  
5 To state a claim for conspiracy under 42 U.S.C. § 1985(3), the plaintiff must allege “(1)  
6 [t]hat the purpose of the conspiracy was to deprive the plaintiff of equal protection, equal  
7 privileges and immunities, or to obstruct the course of justice in the state; (2) that the  
8 defendants intended to discriminate against the plaintiff; (3) that the defendants acted  
9 under color of state law and authority; (4) that the acts done in furtherance of the  
10 conspiracy resulted in an injury to the plaintiff’s person or property or prevented him from  
11 exercising a right or privilege of a United States citizen.” *Sykes v. State of Cal.*, 497 F.2d  
12 197, 200 (9th Cir. 1974) (citations omitted).

13 Even liberally construed, Longstreet’s conclusory allegations do not articulate how  
14 Defendants intended to discriminate against him through the cellphone seizure—  
15 particularly since he previously alleged that they only confiscated his phone to investigate  
16 him for the Dotty’s Incident. (ECF No. 4-1 at 3, 5-6.) See *id.* Longstreet also fails to provide  
17 any details to support that there was a meeting of the minds or agreement between  
18 Defendants to deprive him of his rights. (*Id.* at 5-6.) See *Sanchez v. City of Santa Ana*,  
19 936 F.2d 1027, 1039 (9th Cir. 1990) (“A mere allegation of conspiracy without factual  
20 specificity is insufficient to support a claim”) (citation omitted). The claim is therefore  
21 dismissed without prejudice but with leave to amend.

22 Second, Longstreet alleges that Wells, Solis, and Aguilar violated due process by  
23 seizing his cellphone without a warrant, and that Wells and Knickerbocker violated due  
24 process by recording their jail cell conversation without court authorization. (*Id.*) To state  
25 a colorable Fourteenth Amendment procedural due process claim, the plaintiff must

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26 <sup>9</sup>The Court notes that Longstreet’s conspiracy and Fourteenth Amendment claims  
27 are difficult to follow. (ECF No. 4-1 at 5-6.) He appears to aggregate allegations for  
28 different constitutional claims together and interweave allegations for his prior Fourth  
Amendment claim in his new claims. (*Id.*) If Longstreet chooses to file a second amended  
complaint, the Court cautions him to comply with the legal standards for each claim and  
only include relevant facts.

1 allege that (1) he possesses a protected liberty or property interest; (2) the government  
2 deprived him of that interest; and (3) the government denied him adequate procedural  
3 protections in the process of depriving him of his property. *See Foss v. Nat'l Marine*  
4 *Fisheries Serv.*, 161 F.3d 584, 588 (9th Cir. 1998); *Brewster v. Bd. of Educ. of Lynwood*  
5 *Unified Sch. Dist.*, 149 F.3d 971, 983 (9th Cir. 1998).

6 As to the confiscation of Longstreet's cellphone, the Court construes his  
7 allegations as challenging two deprivations: (1) the initial seizure of his cellphone during  
8 his arrest, and (2) the continual withholding of his cellphone afterwards. (ECF No. 4-1 at  
9 5-6.) *See Keel v. City of L.A.*, Case No. 2:20-cv-02022-CBM-KES, 2020 WL 7231120, at  
10 \*4 (C.D. Cal. Sept. 8, 2020). As to the first deprivation, Longstreet fails to state a claim  
11 because he does not allege that the officers lacked probable cause for the arrest and  
12 subsequent seizure of his property. (ECF No. 4-1 at 5-6.) *See Sanders v. City of San*  
13 *Diego*, 93 F.3d 1423, 1429 (9th Cir. 1996) (finding that an officer's "compliance with the  
14 Fourth Amendment when seizing the property for investigatory purposes satisfied pre-  
15 deprivation procedural due process as well").

16 As to the second deprivation, Longstreet does not articulate or include any facts  
17 regarding the established state procedures that he is challenging when Defendants  
18 refused to return his cellphone, or that Defendants failed to comply with these established  
19 procedures/safeguards by keeping his phone. (*Id.*) *See Keel*, 2020 WL 7231129, at \*4;  
20 *Foss*, 161 F.3d at 588. As to his unauthorized recording claim, Longstreet fails to specify  
21 the protected liberty interest that he was deprived of with the recording. (*Id.*) Other than  
22 vaguely alleging that Defendants did not have "court authorization," Longstreet also fails  
23 to articulate the particular procedural protections he was denied. (*Id.*) *See Foss*, 161 F.3d  
24 at 588. The Court therefore dismisses Longstreet's due process claim without prejudice  
25 but with leave to amend.

26 Third, Longstreet appears to sue Wells, Solis, Aguilar, Wells, and Knickerbocker  
27 for violation of the Fourteenth Amendment Equal Protection Clause. (*Id.*) He specifically  
28 alleges that Wells, Solis, and Aguilar unlawfully seized his cellphone because he was

1 African American and that they would have acted differently “had [he] been any other  
2 race.” (*Id.* at 5.) He then alleges that Wells and Knickerbocker unlawfully recorded him  
3 because he was an African American man, who was “wanted for an offense committed  
4 against a male Hispanic” and who “was being accused of committing a battery against a  
5 female.” (*Id.* at 6.) The Equal Protection Clause of the Fourteenth Amendment is  
6 essentially a directive that all similarly situated persons must be treated equally under the  
7 law. See *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985). To  
8 state an equal protection claim, a plaintiff must allege facts demonstrating that the  
9 defendants acted with the intent and purpose to discriminate against him based upon  
10 membership in a protected class, or that the defendants purposefully treated him  
11 differently than similarly situated individuals without any rational basis for the disparate  
12 treatment. See *Lee v. City of L.A.*, 250 F.3d 668, 686 (9th Cir. 2001); *Vill. of Willowbrook*  
13 *v. Olech*, 528 U.S. 562, 564 (2000). Conclusory allegations of discrimination are  
14 insufficient. See *Jeffers v. Gomez*, 267 F.3d 895, 913-14 (9th Cir. 2001).

15 Here, Longstreet does not include any additional details, aside from the fact that  
16 he was African American and the victim was Hispanic, to support his allegation that race  
17 played a factor in Defendants’ decision to seize his phone. (*Id.* at 5-6.) See *id.* He also  
18 fails to include any additional facts, aside from the victim’s race and his confinement for  
19 a domestic violence incident, to support his allegation that Wells and Knickerbocker acted  
20 with intent to discriminate when they recorded him. (*Id.* at 6.) See *Lee*, 250 F.3d at 686.  
21 Moreover, Longstreet does not provide specific facts to support that individuals of different  
22 races were treated differently in a similar situation. (*Id.* at 5-6.) See *id.* Hence, Longstreet’s  
23 conclusory and curt allegations fail to link his membership in a protected class to  
24 Defendants’ actions, and are insufficient to state a colorable claim. (*Id.*) See *Jeffers*, 267  
25 F.3d at 913-14. The Court therefore dismisses Longstreet’s equal protection claim without  
26 prejudice but with leave to amend.

#### 27 **D. Leave to Amend**

28 Although the Court grants Longstreet leave to amend, it does not grant him leave

1 to amend in any way that he sees fit. Longstreet only has leave to amend his § 1985  
2 conspiracy to interfere with civil rights, Fourteenth Amendment Due Process, and  
3 Fourteenth Amendment Equal Protection claims. Longstreet may not try to reassert his  
4 Fourth and Six Amendment claims in the second amended complaint (“SAC”).

5 If Longstreet chooses to file a SAC, he is advised that the SAC supersedes  
6 (replaces) the original Complaint and, thus, must be complete in itself. *See Hal Roach*  
7 *Studios, Inc. v. Richard Feiner & Co., Inc.*, 896 F.2d 1542, 1546 (9th Cir. 1989); *Lacey v.*  
8 *Maricopa Cnty.*, 693 F.3d 896, 928 (9th Cir. 2012). Longstreet’s SAC must contain all  
9 claims, Defendants, and factual allegations that he wishes to pursue in this lawsuit.  
10 Moreover, Longstreet should file his SAC on this Court’s approved prisoner civil rights  
11 form, and it must be titled “Second Amended Complaint.”

12 The Court notes that, if Longstreet chooses to file a SAC, he must file the amended  
13 complaint within 30 days from the date of entry of this order. If Longstreet chooses not to  
14 file a SAC, this action will be dismissed in its entirety without prejudice.

## 15 **V. CONCLUSION**

16 It is therefore ordered that Longstreet’s objection (ECF No. 3) to the Report and  
17 Recommendation of Judge Baldwin (ECF No. 2) is overruled.

18 It is further ordered that Judge Baldwin’s Report and Recommendation (ECF No.  
19 2) is adopted, but the Court grants leave to amend as discussed herein.

20 It is further ordered that Longstreet’s motion to file an amended complaint (ECF  
21 No. 4) is denied.

22 It is further ordered that Longstreet’s application to proceed *in forma pauperis* (ECF  
23 No. 1) is granted.

24 It is further ordered that Longstreet’s Fourth Amendment claim for the search and  
25 seizure of his cellphone is dismissed without prejudice and without leave to amend.

26 It is further ordered that Longstreet’s Fourth Amendment claim for invasion of  
27 privacy is dismissed with prejudice and without leave to amend.

28 It is further ordered that Longstreet’s Sixth Amendment claim is dismissed without

1 prejudice and without leave to amend.

2 It is further ordered that Longstreet's § 1985 conspiracy to interfere with civil rights,  
3 Fourteenth Amendment Due Process, and Fourteenth Amendment Equal Protection  
4 claims are dismissed without prejudice but with leave to amend.

5 It is further ordered that, if Longstreet chooses to file a second amended complaint  
6 curing the deficiencies in his Proposed FAC, as outlined in this order, Longstreet must file  
7 the second amended complaint within 30 days from the date of entry of this order.

8 The Clerk of Court is directed to send Longstreet the approved form for filing a §  
9 1983 complaint, instructions for the same, and a copy of his original Complaint and  
10 Proposed FAC. (ECF Nos. 1-1, 4-1.) If Longstreet chooses to file a second amended  
11 complaint, he should use the approved form and he will write the words "Second  
12 Amended" above the words "Civil Rights Complaint" in the caption.

13 It is further ordered that, if Longstreet chooses to file a second amended complaint,  
14 the Court will screen this amended complaint in a separate screening order. The  
15 screening process will take several months.

16 It is further ordered that, if Longstreet chooses not to file a second amended  
17 complaint curing the stated deficiencies, this action will be dismissed in its entirety without  
18 prejudice.

19 The Clerk of Court is directed to file the Complaint (ECF No. 1-1).

20 DATED THIS 11<sup>th</sup> Day of July 2022.

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24 MIRANDA M. DU  
25 CHIEF UNITED STATES DISTRICT JUDGE  
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